

Internal Revenue Service

Department of the Treasury

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:ITA:B05

PLR-126552-10

Date:

September 30, 2010

Legend:

Taxpayer =

State N =

Partnership 1 =

Partnership 2 =

B =

C =

Tax Year =

Property =

Agency =

X years =

Y years =

Z years =

Building =

Year 1 =

Year 2 =

Advisor =

Dear :

This is in response to your letter of June 16, 2010, requesting an extension of time under §§ 301.9100-1 and 301.9100-3 of the Regulations on Procedure and Administration to file an election under § 168(h)(6)(F)(ii) of the Internal Revenue Code (the "Election"). The material information submitted for consideration is summarized below.

FACTS

Taxpayer is a corporation incorporated in State N. Taxpayer is a calendar year taxpayer using the accrual method of accounting. Taxpayer is a wholly-owned subsidiary of B, which is a non-profit corporation that is a tax-exempt entity under § 501(c)(3). Taxpayer was created by B to serve as general partner in Partnership 1 and Partnership 2.

Partnership 1 is a State N limited partnership that is owned by the .01 % general partner, Taxpayer, and the 99.99 % limited partner, C. Partnership 1 is a calendar year taxpayer using the accrual method of accounting. Partnership 1 was formed to acquire a leasehold interest in the rehabilitated Building leased by Partnership 2, and to operate Building on a day-to-day basis in order to obtain long term appreciation, cash income and return of capital.

Partnership 2 is a State N limited partnership owned by the 90 % general partner, Taxpayer, and the 10 % limited partner, Partnership 1. Partnership 2 was formed to sublease Building from B; to develop, maintain, improve and manage Building; and to further sublease Building to Partnership 1.

Property was closed by the United States Navy. Agency and an independent third party then entered into a Disposition and Development Agreement (DDA) to redevelop Property as a civic, arts and cultural district. In 2000, B was established to raise the funds to finance renovation of the buildings in Property and to create and operate a new cultural community. The buildings serve students, families, artists, scientists and entrepreneurs. B determined that Project was placed on the National Register of Historic Places.

The independent third party assigned a portion of its rights and obligations under the DDA to B. Under the DDA, Agency agreed to lease the land and buildings in Property to B for a period of X years beginning on October 14, Year 1. During Year 1, B applied to the National Park Service Tax ("NPS") Incentive Program to certify that Building contributes to the significance of Property and therefore is a "certified historic structure" for purposes of the rehabilitation tax credit ("HTC"). Part 3 approval of Building as a certified historic structure, and final approval of the rehabilitation of Building by NPS is pending.

In December, Year 1, B began discussions with Advisor to determine how the HTC could be used to make the redevelopment economically feasible. The parties decided upon a two-tiered lease structure resulting in the creation of the above entities. On February 25, Year 2, B executed a sublease of the land and buildings in Property to Partnership 2 for a period of approximately Y years beginning on that date. On the same day, Partnership 1 executed a sublease with Partnership 2, as Landlord, for a

term of approximately Z years on a net lease basis. This second sublease also begins on February 25, Year 2, and permits Partnership 2, as Landlord, to make an election under § 50D of the Code to pass rehabilitation tax credits through to Partnership 1.

In order to claim the HTC, the property cannot be tax-exempt use property. In the case of property leased by a partnership with tax-exempt partners, the portion of the property treated as tax-exempt use property is the tax-exempt partner's highest proportionate share of any item of income or gain. See § 168(h)(5) of the Code. Since Taxpayer is a wholly-owned subsidiary of B, Taxpayer is a tax-exempt controlled entity within the meaning of § 168(h)(6)(F)(iii). However, Taxpayer may elect, under § 168(h)(6)(F)(ii), to not be treated as a tax-exempt controlled entity for purposes of §§ 168(h)(5) and (h)(6). Your submission represents that the need to file this election was discussed and anticipated by Advisor and B. Moreover, all parties to the transaction agreed to memorialize the requirement that Taxpayer file the § 168(h)(6)(F)(ii) election in its partnership agreement.¹ The election was necessary so that the alternate depreciation system under § 168(g) would not be applied to the property and any rehabilitation expenditures would give rise to the HTC

In December, Year 2, Taxpayer's Chief Financial Officer ("CFO") contacted an accounting firm to discuss tax and audit work for this transaction, which included the tax return for Taxpayer. Your submission states that both parties were fully aware of the need to file the § 168(h)(6)(F)(ii) election as required by the Code and regulations for the Taxpayer's initial taxable year ending December 31, Year 2. The following January, the accounting firm e-mailed Taxpayer with its proposed fees for audit and tax work on this transaction. The accounting firm's e-mail did not include a list of the entities for which tax returns would be prepared, and the CFO assumed they were the same entities that were listed in a previous e-mail. However, the accounting firm did not receive signed engagement letters for the tax and audit work for the Taxpayer or any of the other entities in this transaction prior to the filing dates.

In March, the accounting firm e-mailed the CFO that the time for filing the tax returns for various entities had been extended. The e-mail included proof of federal electronic filing acceptance for those entities, but did not reference the Taxpayer or any of the other entities in this transaction as one of the corporate tax returns being extended. That same month, the CFO was notified that his father suffered a severe stroke. The CFO immediately left the office for the hospital. The CFO did not return to his office, but continued to access his office e-mail via PDA and saw the message regarding the tax

¹ You represent that the Amended and Restated Limited Partnership Agreement for Partnership 1 was executed on February 25, Year 2, and that it admitted, C, as the new 99.99% limited partner. The original limited partner, B, withdrew. Section 4.01 of that agreement provides, "...if any partner or constituent member is a non-profit entity, the General Partner shall make the elections provided for under Section 168(h)(6)(F)(ii) of the Code." Section 13.03 – Accountants-- states, "The first tax return of the Landlord that reflects the Tax Credits shall be reviewed by the Accountants to verify that the Pass-Through Election under Code Section 50(d)(5) with respect to the Tax Credits required under the Master Lease has been made.

extensions. In his distraught state, the CFO failed to notice that the extension for Taxpayer was inadvertently omitted from those that were to be electronically filed by the March 15th due date. CFO's father passed away and the CFO did not return to the office until three days after the due date for Taxpayer's extension. CFO was still under the impression that all extensions had been filed in a timely manner and did not discover that the Taxpayer's had been omitted until several weeks after the due date.

Accordingly, Taxpayer has not filed an income tax return and is not under an extension. The Taxpayer is seeking relief under §§ 301.9100-1 and 301.9100-3 for failure to make a timely election.

LAW AND ANALYSIS

Section 168(h)(6)(A) provides that, for purposes of § 168(h), if (1) any property which is not tax-exempt use property is owned by a partnership which has both a tax-exempt entity and a person who is not a tax-exempt entity as partners, and (2) any allocation to the tax-exempt entity of partnership items is not a qualified allocation, then an amount equal to such tax-exempt entity's proportionate share of such property shall be treated as tax-exempt use property.

Section 168(h)(6)(F)(i) provides that, for purposes of § 168(h)(6), any tax-exempt controlled entity shall be treated as a tax-exempt entity.

Section 168(h)(6)(F)(ii) provides that, for purposes of § 168(h)(6), a tax-exempt controlled entity may elect not to be treated as a tax-exempt entity. Such an election ("Election") is irrevocable and will bind all tax-exempt entities holding an interest in the tax-exempt controlled entity.

Section 301.9100-7T(a)(2)(i) requires elections under § 168(h)(6)(F)(ii) to be made by the due date of the tax return for the first taxable year for which the election is to be effective. Therefore, the Election is a regulatory election under § 301.9100-1(b).

Under § 301.9100-1(c) and § 301.9100-3(a), the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election under all subtitles of the Internal Revenue Code, except subtitles E, G, H, and I, provided the taxpayer demonstrates to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

Based on the facts and information submitted and representations made, we conclude that Taxpayer acted reasonably and in good faith and that granting relief will not prejudice the interests of the government. Accordingly, the requirements of the regulations for granting relief in this case have been satisfied and we grant an extension

of time, until 60 days from the date of issuance of this letter, for Taxpayer to file the Election.

Taxpayer must file a Federal income tax return for its tax year ending on December 31, 2009, and attach thereto the Election and information set forth in § 301.9100-7T(a)(3). Taxpayer should also attach a copy of this letter to the return. In addition, pursuant to § 301.9100-7T(a)(3)(ii), a copy of the Election statement should also be attached to the Federal income tax returns of each of the tax-exempt shareholders or beneficiaries of Taxpayer.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer(s) requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

The rulings contained in this letter are based upon information and representations submitted by the Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

William A. Jackson
Branch Chief, Branch 5
Office of Chief Counsel
(Income Tax & Accounting)

Enclosure (1)
Copy for section 6110 purposes